

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Jayeshkumar Shankarbhai Chaudhari,

Petitioner,

v.

Kristi Noem
Secretary, U.S. Department of
Homeland Security, et al.

Respondents.

Cause No. 3:26-cv-00123-LS

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Petitioner Jayeshkumar Shankarbhai Chaudhari ()
through counsel, seeks a writ of *habeas corpus* under 28 U.S.C. § 2241,
challenging the legality of his *re-detention* by Immigration and Customs
Enforcement (“ICE”).
2. Petitioner is in the physical custody of Respondents at the Ortero County
Processing Center in Chapparral, New Mexico.¹ (*Ex 1 Detainee Locator*)

¹ Petitioner was previously in the custody of El Paso Processing Center.

Petitioner now faces unlawful re-detention by the Department of Homeland Security (DHS).

3. Petitioner, upon entry, was charged with, *inter alia*, having entered the United States without admission or inspection. *See 8 U.S.C. § 1182(a)(6)(A)(i). (Ex. 2 NTA)*
4. As stated, Petitioner was apprehended and initially released from custody upon first encounter by DHS and then subsequently re-detained. DHS has, without reason or change of circumstance, re-detained Petitioner to continue removal proceedings in custody. *(Ex. 1, Ex. 4 EOIR Case Status)*
5. Accordingly, Petitioner seeks a writ of *habeas corpus* requiring that he be released as Petitioner's re-detention was a violation of due process and an ultra-vires action by the Respondents.

I. PARTIES

1. Petitioner, Jayeshkumar Shankarbhai Chaudhari, is a non-citizen who is currently detained by ICE at the Montgomery Processing Center in Conroe, Texas.
2. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is the cabinet-level secretary responsible for all immigration enforcement in the United States. She is sued in her official capacity only.
3. Respondent Todd Lyons is the Acting Director of U.S. Immigration and

Customs Enforcement (“ICE”). He is the head of the federal agency responsible for all immigration enforcement in the United States. He is sued in his official capacity only.

4. Respondent Marcos Charles is the Acting Executive Associate Director of ICE Enforcement and Removal Operations. He is the head of the ICE office that carries out arrests of noncitizens and removals from the United States. He is sued in his official capacity only.
5. Respondent, Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and application for relief from removal do so as her designees. She is sued in her official capacity only.
6. Respondent, Warden, El Paso Immigration Processing Center. He is the head of the facility that currently maintains physical custody of the Petitioner. He is sued in his official capacity only.²

JURISDICTION

7. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241 and 28 U.S.C. § 1331, Federal Question Jurisdiction as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United

² Petitioner was transferred during the pendency of this habeas to Ortero County Processing Center, in New Mexico

States. This Court may grant relief pursuant to 28 U.S.C. § 2241, and the *All Writs Act*, 28 U.S.C. § 1651.

CUSTODY

8. Petitioner is under the Physical custody of the Respondents and is currently detained at the Ortero County Processing Center, Chaparral NW.

VENUE

9. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where the Petitioner is detained. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973). Litigation on the Habeas began in the Western District of Texas prior the Petitioner's transfer to New Mexico therefore venue is proper in the District. Respondents do not contest jurisdiction in the Western District.³

REQUIREMENTS SET FORTH IN 28 U.S.C 2243

10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show

³ Conferral with opposing counsel was conducted on February 13, 2026 and the Respondents do not contest jurisdiction.

cause is issued, the Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

11. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

FACTS

12. Petitioner is a non-citizen from who entered the United States without inspection. (*Ex. 2 NTA*)
13. The Petitioner after initial entry taken into immigration custody and charged with removability under 212(a)(6)(A)(i) of the Immigration and Nationality Act, (8 U.S.C. § 1182(a)(6)(A)(i)) as an alien present in the United States without being admitted or paroled. (*Ex. 2*)
14. After being initially detained Petitioner was released under humanitarian parole from custody and allowed to continue removal proceedings in a non-detained manner. At the time of release, DHS necessarily determined that Petitioner’s future appearance in court and public-safety risks could be managed without detention. (*Ex 3 Parole*)

15. Recently, the Petitioner was re-detained by DHS without cause, revoking Petitioner's prior release from custody, without any identified change in circumstances. (*Ex. 4 EOIR Case Status*)

16. The Petitioner currently remains in detention with his removal proceedings continuing in custody. Without relief from this Court the Petitioner will remain in custody for months or even years while his case is processed. (*Ex. 4 EOIR Case Status*)

CAUSES OF ACTION

I. Inapplicability of *Buenrostro-Mendez v. Bondi* to the Instant Matter

17. Petitioner acknowledges the recent 5th Circuit Precedential decision of *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701, slip op. at ____ (5th Cir. Feb. 6, 2026) that found that noncitizens who entered without inspection and were never admitted are "applicants for admission" under § 1225(a)(1), such applicants are "seeking admission" within the meaning of § 1225(b)(2)(A) and therefore, § 1225(b)(2)(A) requires mandatory detention without bond during removal proceedings. However, the Fifth Circuit never reached the question of due process or liberty interest in being free from custody following re-detention by DHS. Further, the Court only decided who may be detained under the statute, but they never addressed how a prior release affects the constitutionality of a re-

detention or whether mandatory detention under 1225(b)(2)(A) can violate due process on a re-detention. Petitioner does not challenge DHS's general authority to detain under § 1225(b)(2)(A), but rather the constitutionality and legality of withdrawing previously granted liberty without process. Accordingly, *Buenrostro-Mendez* resolved only who may be detained under § 1225(b)(2)(A), not whether DHS may withdraw previously granted liberty through re-detention without due process or statutory justification.

18. Following *Buenrostro* a growing body of law has come about granting relief for habeas Petitioner's based on due process violations. *See Hassen v. Noem*, No. EP-*26-CV-00048-DB (W.D. Tex. Feb. 9, 2026), *Marceau v. Noem*, No. EP-26-CV-237-KC (W.D. Tex. Feb. 9, 2026), *Ayala Aguirre v. Bondi*, No. EP-26-CV-346-KC (W.D. Tex. Feb. 18, 2026), *Bonilla Chicas v. Warden*, 5:26-cv- 00131 (S.D. Tex. Feb. 20, 2026), *Lopez Mejia v Warden Webb County*, 5:26-cv-00160 (S.D. Tex. Feb. 24, 2026).

19. The relief prescribed by the Court in the recent due process related habeas grants is release and not a bond hearing. (*Id.*)_

**CAUSE OF ACTION I
DUE PROCESS VIOLATION- 5th AMENDMENT**

20. Petitioner incorporates by reference all preceding paragraphs/

21. The Fifth Amendment's Due Process Clause protects noncitizens physically present in the United States from arbitrary deprivations of liberty, including freedom from physical restraint. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), *See also Reno v. Flores*, 507 U.S. 292, 301–02 (1993)
22. Freedom from physical restraint lies at the heart of the liberty protected by the Due Process Clause, and immigration detention—although civil—implicates a substantial liberty interest that may not be deprived arbitrarily or without due process of law.
23. When the Government releases a person from custody, it creates a constitutionally protected liberty interest in continued freedom that cannot be withdrawn without due process. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 147–49 (1997).
24. Once the government confers liberty and allows an individual to reenter the community, that liberty may not be withdrawn arbitrarily or without justification, even where the government retains authority to regulate the individual's status.
25. The Petitioner was previously detained and released by the Respondents. Once released from custody a non-citizen acquires a protectable liberty interest in remaining out of custody.
26. Substantive due process protects the liberty interest in freedom from

physical restraint itself, while procedural due process governs the process required before that liberty—once granted—may be withdrawn.

i. Substantive Due Process Violation

27. Immigration detention is civil, not punitive, and is constitutionally permissible only when it is reasonably related to a legitimate governmental purpose, such as preventing flight or protecting the community. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 527–28 (2003).

28. Detention violates substantive due process when it becomes arbitrary, excessive, or disconnected from its asserted regulatory purpose. *Zadvydas*, 533 U.S. at 690–91.

29. Respondents’ re-detention of Petitioner is not reasonably related to any legitimate civil purpose because: a. DHS had already determined Petitioner was suitable for release; b. Petitioner demonstrated compliance while at liberty; c. Respondents identified no new facts or changed circumstances; and d. Less restrictive alternatives to detention remain available and effective.

30. The Supreme Court has noted that Due process requires notice that is “reasonably calculated, under all the circumstances, to apprise interested parties” and that “afford[s] a reasonable time . . . to make [an]

appearance.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950)

31. Under these circumstances, renewed detention serves no legitimate regulatory goal and instead constitutes arbitrary confinement prohibited by substantive due process. *Reno v. Flores*, 507 U.S. at 305–06.

32. Respondents’ actions therefore violate Petitioner’s substantive due process rights under the Fifth Amendment.

ii. Procedural Due Process Violation

33. “[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.” *Trump v. J. G. G.*, 604 U. S. 670, 673, 145 S. Ct. 1003, 221 L. Ed. 2d 529, 532 (2025) (per curiam) (internal quotation marks omitted). “Procedural due process rules are meant to protect” against “the mistaken or unjustified deprivation of life, liberty, or property.” *Carey v. Piphus*, 435 U. S. 247, 259, 98 S. Ct. 1042, 55 L. Ed. 2d 252 (1978). *See also A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025)

34. DHS previously determined that Petitioner did not pose a flight risk or danger to the community and released Petitioner from immigration on parole.

35. Petitioner complied with all conditions of release and remained at liberty without incident.

36. Respondents thereafter re-detained Petitioner without identifying any

materially changed circumstances, new evidence, or violations of release conditions that would justify renewed custody.

37.Re-detention following release constitutes a new deprivation of liberty, not a continuation of prior detention, and therefore requires individualized justification and meaningful procedural safeguards. *Zadvydas*, 533 U.S. at 690; *Jennings v. Rodriguez*, 583 U.S. 830, 842–43 (2018) (preserving as-applied due process challenges). This deprivation is constitutionally distinct from initial border detention and requires its own justification and process.

38.Further due process requires that immigration detention not be arbitrary and that custody determinations be accompanied by a meaningful opportunity to be heard before a neutral decisionmaker. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

39.Respondents failed to provide Petitioner with a prompt and meaningful custody redetermination on re-detention, an individualized explanation for why prior release was no longer sufficient, and a reasoned assessment of flight risk or dangerousness based on current facts.

40.Because Respondents re-detained Petitioner without adequate procedural protections or individualized justification, they deprived him of liberty without due process of law, in violation of the Fifth Amendment.

41.This detention is unconstitutional regardless of whether the Government

claims statutory authority for detention, because due process protects liberty already conferred. *See Zadvydas*, 533 U.S. at 693.

COUNT II
Ultra Vires Agency Action Re-Detention in Excess of Statutory Authority

42. Petitioner realleges and incorporates all preceding paragraphs.
43. Petitioner is detained, pending removal proceedings.
44. Binding agency precedent provides that once DHS grants release from custody, it may revoke that release only upon a showing of materially changed circumstances or other legitimate justification. *Matter of Sugay*, 17 I. & N. Dec. 637, 640–41 (BIA 1981).
45. DHS custody determinations must be individualized and must consider prior compliance and history of release. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).
46. While DHS retains discretion over custody determinations, discretion does not include the authority to disregard binding agency precedent or to revoke release absent materially changed circumstances.
47. Respondents revoked Petitioner's release and re-detained him without identifying materially changed circumstances or articulating a reasoned basis for departing from the prior custody determination.

48. By re-detaining Petitioner absent the showing required by binding agency precedent, Respondents acted in excess of their statutory authority.

49. Ultra vires agency action is not entitled to deference and renders Petitioner's continued detention unlawful. *See Jennings*, 583 U.S. at 842 (courts retain authority to resolve constitutional and ultra vires claims).

50. To the extent Petitioner is detained under 8 U.S.C. § 1225(b), parole under 8 U.S.C. § 1182(d)(5)(A) remains the sole statutory mechanism for release, and Respondents' failure to meaningfully consider parole further renders Petitioner's detention unlawful.

REQUEST FOR RELIEF

Petitioners pray for judgment against Respondents and respectfully request that the Court enters an order:

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus directing Respondent to release Petitioner from detention and return Petitioner to the conditions of prior release;
3. Declare that Petitioner's continued detention violates federal law and the Constitution;
4. Order the Respondent to return identity documents to Petitioner upon release, including but not limited to Social Security Card, Work Authorization, Driver's License, ID Card and Passport.
5. Award reasonable attorney's fees and costs under the Equal Access to

Justice Act (EAJA), 28 U.S.C. § 2412; and

6. Grant any other relief the Court deems just and proper.

Respectfully submitted,

/s/Varsha Shirhatti
Varsha Shirhatti Esq.
Lead Counsel for Petitioner
Rivera & Shirhatti, PC
PO Box 848
Houston, Texas 77001
vshirhatti@rsimmilaw.com
(P): (832) 991-1105

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jayeshkumar Shankarbhai Chaudhari, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 24th day of February 2026.

/s/Varsha Shirhatti
Varsha Shirhatti
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on February 24, 2026, the foregoing pleading was filed with the court through the court cm/ecf system on all parties and counsel registered with the court cm/ecf system.

/s/Varsha Shirhatti
Varsha Shirhatti
Attorney for Petitioner